

Attachment 5B(1)

Explanatory Note for U.S. Army Corps of Engineers (USACE) Report November 2, 2009

This note provides the U.S. Army Corps of Engineers Civil Works Program response to the requirement for information for the Council on Environmental Quality (CEQ) report to Congress, as outlined by section 1609 of the American Recovery and Reinvestment Act (ARRA). The enclosed information describes the status of 827 ARRA funded projects and activities and the associated 2,069 NEPA actions as of September 30, 2009.

This report includes two projects within the Regulatory Program. There are three other projects from the Regulatory Program that were reported last cycle that have been withdrawn because two of the projects are no longer viable and one project cannot be completed within the Recovery Act timeline due to the design of the project.

As reported last quarter, there may be multiple NEPA actions for a single Civil Works project or activity. Reasons for multiple NEPA actions on one project or activity include situations where a significant change to the scope of the original project, such as a disposal site on a dredging project or a design change on a flood control project, requires a new environmental review. In addition, there are programmatic NEPA documents on some of the projects which then require tiered component or site specific analysis or information is out of date and the NEPA documentation must be updated through a subsequent analysis.

While we have significantly reduced the number of pending items from our August 2009 report, there are still some projects with pending carrying over from the last report. Of the 297 pending actions, 15 are new pending actions in this quarter's report. Another 170 actions are still pending from last report because the decision to proceed with the work will not start until later in FY 10 and the project design and analysis is being refined; therefore, the NEPA action will not be completed until the decision is made. The remaining 112 pending actions are for projects that have issues such as scope changes, site selection delays, extensive coordination with other agencies, and sponsor delays that will take more than one reporting cycle to complete.

As stated previously, the majority of the Regulatory Program funding for these NEPA actions is being used to hire temporary employees and to acquire products that would support regulatory decision-making. Examples of the products that will be purchased include aerial photography or other remote sensing information that will be used to aid permit decisions or jurisdictional determinations, as well as the collection of stream information that will be used to develop stream assessment protocols used in permit decision-making.

There are several reasons why NEPA is not applicable on all studies/projects within the Army Civil Works program. Specifically:

- The Formerly Utilized Sites Remedial Action Program is excluded because it is covered under the Comprehensive Environmental Response, Compensation, and Liability Act.

- NEPA is not required on either the Planning Assistance to States Program or the Floodplain Management Services Program. In addition, some of the funding is being used towards research and development, as well as providing technical assistance, guidance, and assessments.

There are two projects within the Construction Program that do not require NEPA. One project is a research program and the other project is a water quality contamination study that will not lead to construction. In addition, there is one project that has been withdrawn this reporting cycle because the project will no longer be constructed with Recovery Act funds because the program which this project is part of has reached its authorized programmatic limit.

- In the Operation and Maintenance program, some of the funding included is for national studies that do not resulting in decisions on future or individual projects

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